

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

WILLIAM W. ABBOTT, JR.

PLAINTIFF

V.

CIVIL ACTION NO. 1:09cv109-LTS-RHW

STATE OF MISSISSIPPI;
HARRISON COUNTY, MISSISSIPPI;
U.S. BANK, CUSTODIAN FOR SASS MUNI V DTR;
AND REBUILD AMERICA, INC.

DEFENDANTS

ORDER

This cause of action was removed [1] by Defendant Rebuild America, Inc. (Rebuild America) from the Chancery Court of Harrison County, Mississippi. Plaintiff seeks, among other things, to remove cloud on title and to quiet and confirm title to land. Specifically, the Complaint takes aim at a tax sale which is alleged to be void. The basis for removal is 28 U.S.C. § 1332(a)(1), with Rebuild America asserting that the State of Mississippi and Harrison County, Mississippi (Harrison County) are not “proper parties to this action and their inclusion as party defendants is improper and done for the sole basis of defeating diversity.” Rebuild America also claims the amount in controversy exceeds \$75,000, “by reason of the fact that the value of the subject property” exceeds that sum.

Plaintiff has filed a [4] Motion to Remand, which is [5] joined by Harrison County. Also pending is the Plaintiff’s [14] Motion to Strike Rebuild America’s [13] Response in Opposition to the [4] Motion to Remand. Because the Court finds that Plaintiff’s motion to strike is well taken, and that Rebuild America neither has shown that it is facially apparent that Plaintiff’s claims are probably in excess of the \$75,000 jurisdictional bar, nor has established the existence of the required amount, it is unnecessary to reach the issue of whether there has been an improper or fraudulent joinder.

As part of its [13] response to Plaintiff’s motion to remand, Rebuild America offered a one-page so-called appraisal by Alain Harpin of Prudential Gardner Realtors. Attached to Plaintiff’s [14] motion to strike is a letter dated February 27, 2009, signed and sealed by Robert E. Praytor, Administrator of the Mississippi Real Estate Commission and the Mississippi Real Estate Appraisal Board, the body of which reads:

Please accept this letter as an official response to your inquiry concerning the professional license of Mr. Alain G. Harpin and his ability to legally furnish an opinion as to the value of real estate. Mr. Harpin has been licensed as a real estate salesperson (License #42198) in the State of Mississippi since November 1, 2005 and is currently in good standing and on active status with the Mississippi Real

Estate Commission. He is allowed to participate in licensable real estate activity with Prudential Gardner Realtors and reports directly to Principal Broker Barbara Hanshaw Blades.

Section 73-34-5 (2) of the Mississippi Code allows a real estate salesperson, in the ordinary course of business, to offer an opinion as to the “price of real estate for the purpose of a prospective listing or sale” but such opinion may not be referred to as an appraisal, no compensation may be charged for the service and the opinion may not be used to establish a property value. In a similar fashion, Rule IV (A) <7> of the Mississippi Real Estate Commission includes the same language. Any salesperson that is found to be in violation [of] those guidelines will face criminal charges from the Real Estate Appraisal Board and licensing sanctions from the Real Estate Commission.

(Underline in original)

Rebuild America has not responded to the motion to strike, and the time for doing so has expired. Rule 7.2 (C)(2) of the Uniform Rules of this Court provides that “[i]f a party fails to respond to any motion, other than a motion for summary judgment, within the time allotted, the court may grant the motion as unopposed.

Rebuild America has failed in its burden of establishing that the amount in controversy exceeds \$75,000.00, and this Court determines that it does not have subject matter jurisdiction of this cause of action because the requisite jurisdictional amount is not in controversy. Remand is the appropriate remedy.

Accordingly, **IT IS ORDERED:**

Plaintiff’s [14] Motion to Strike Rebuild America’s [13] Response in Opposition to Remand is **GRANTED**;

Plaintiff’s [4] Motion to Remand is **GRANTED**;

This cause of action is **REMANDED** to the Chancery Court of Harrison County, Mississippi, with all parties to bear their own costs;

The Clerk of Court shall take the steps necessary to return this action to the court from which it was removed.

SO ORDERED this the 6th day of April, 2009.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE